February 28, 1963 and the hearing in the Sessions Court began on November 27, 1963. In my view, therefore, as the law applicable was the law as it existed at the date of the hearing, and as the tenancy was then protected by the provisions of the Control of Rent Ordinance 1956, no order for possession could be made...."

Brown v. *Draper*,[4] is authority for the proposition that the only ways in which a tenant can be deprived of the protection of the Rent Acts are by giving up possession, in which case no order for recovery of possession against him is required, or by having an order for recovery of possession made against him. In the present case, by the time the appellants came to court to recover possession of the said premises against the first respondent, they were too late. At the date of the hearing his two sons were already over 16 years of age and were members of his family residing in the said premises. The learned District Judge was therefore precluded by section 16 of the Control of Rent Act from giving judgment in favour of the appellants.

The appellants had another string to their bow. They claimed that the first respondent had assigned the tenancy of the said premises to the second respondent in breach of the condition of his tenancy agreement prohibiting an assignment and they were therefore entitled to recover possession of the said premises under section 15(1)(b) of the Control of Rent Act. The appellants contended that clause 1(f) of the separation agreement between the first respondent and his wife dated April 16, 1966, was an assignment of the tenancy of the said premises. In my view clause 1(f) of the separation agreement should not be read in isolation. When it is read in the context of the entire agreement it is clear that the parties had intended that the wife and children should be allowed to reside in the said premises undisturbed so long as she did not remarry. As Denning L.J. said in *Cobb* v. *Lane*,[6] at page 1202:—

"....The question in all these cases is one of intention. Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land?..."

The first respondent by the separation agreement undertook to pay the rent of the said premises as well as to maintain his wife and infant children. He did not intend to give his wife any interest in the land. This is borne out by the affidavit which he swore on February 22, 1971 and filed in the Divorce Registry of the High Court of Justice in London, in which he said:—

"4. I have a contractual tenancy of the business premises in Malaysia at 48 Jalan Beka, Damansara Heights, Kuala Lumpur, Malaysia. I also hold the tenancy of the former matrimonial home at 33 Jervois Road, Singapore, 10. I own a Mercedes Benz car which I use for business purposes on my visits to Kuala Lumpur the value of which is approximately £1,000."

It is my judgment that the said separation agreement did not transfer or assign the said premises to the second respondent. The first respondent gave his wife nothing more than a licence to occupy the premises with the children of the marriage without interference from him.

For the above reasons I am clear that the appellants are not entitled to recover possession of the said premises either from the first respondent or from the second respondent as she is the first respondent's licensee. In the result this appeal must be dismissed with costs.

Appeal dismissed.

Solicitors: *Kirpal Singh & Co.; Foo & Quek.*

RE TELOK BLANGAH ELECTION

[O.C.J. (Sinnathuray J.) February 27, 1981]
[Singapore — Election Petition No. 1 of 1981]
[Summons in Chambers 492 of 1981 & 510 of 1981]

Election Petition — Service — Personal service — Parliamentary Elections Act (Cap. 50) 3rd Schedule — Parliamentary Elections Petition Rules, rr. 10 and 15.

These were two applications to set aside the service of documents relating to an election petition and for the dismissal of the petition. At the general election held in Singapore on December 23, 1980, for the electoral division of Telok Blangah there were two candidates. On that day the Returning Officer, Ong Kok Min, returned Rohan Kamis as the duly elected Member for Telok Blangah. On January 17, 1981, Chiew Kim Kiat, a voter in the constituency presented and filed the present election petition in the registry of the Supreme Court whereby she prayed "that it might be determined that the said Rohan Kamis was not duly elected or returned and that the election was void." In the petition no one was named as a respondent but Ong Kok Min filed a notice of appointment on February 2, 1981 appointing the Attorney-General or State Counsel to act for him in the proceedings. A similar notice was filed by Rohan Kamis on February 4, appointing Messrs. Rodyk & Davidson to act on his behalf. Following the filing of the notices, applications were taken out on behalf of the respondents which were the subject matter of these proceedings. The respondents submitted that the petitioner had not served on Ong Kok Min and Rohan Kamis a notice of the presentation of the petition and a copy of the petition in accordance with the rules relating to the service of election petitions.

Held: (1) rule 15 requires that notice of the presentation of a petition accompanied by a copy thereof shall within 10 days of the presentation of the petition be served by the petition on the respondent. Such service means personal service and personal service means serving the respondent with a copy of the election petition and showing him a sealed copy if he desires it. However, leaving a copy of the petition with a subordinate officer of Ong Kok Min was not personal service on him;

(2) the election petition is a court document and having regard to the decision in *Devan Nair's case*[1] the election petition must be personally served;

(3) as Rohan Kamis did not avail himself of rule 10 the proper method of service of an election petition on him was either by way of personal service or to leave a copy of the petition at the office of the Registrar of the Supreme Court under rule 10, and under rule 15, to publish a notice in the Gazette stating that a petition has been presented, and that a copy of the same may be obtained by Rohan Kamis on application at the office of the Registrar. Here also, the petitioner had not complied with rules 10 and 15 in effecting service of a copy of the petition on him;

(4) as regards both the respondents, the petitioner had not complied with rule 15 in that in purporting to effect service on the respondents she had not served a notice of the presentation of the petition on them;

(5) for these reasons the service of the documents on Ong Kok Min and Rohan Kamis must be set aside and the election petition dismissed.

Case referred to:-

(1) *Devan Nair* v. *Yong Kuan Teik* [1967] 1 M.L.J. 261; [1967] 2 A.C. 31.

ELECTION PETITION SUMMONS IN CHAMBERS.

J.B. Jeyaretnam (*R. Murugason* with him) for the petitioner.

Tan Boon Teik (Attorney-General) and *Warren Khoo* (Senior State Counsel) for the 1st respondent.

P. Selvadurai (*Richard Ang* with him) for the 2nd respondent.

Simnathuray J. (Election Judge): These are two applications to set aside the service of documents relating to an election petition and for the dismissal of the petition. The relevant facts are these.

A general election of Members of Parliament was held on December 23, 1980. For the electoral division of Telok Blangah there were two candidates, J.B. Jeyaretnam and Rohan Kamis. On that day the Returning Officer, Ong Kok Min, returned Rohan Kamis as the duly elected Member for Telok Blangah.

On January 17, 1981, Chiew Kim Kiat, a voter in Telok Blangah, through her solicitors, presented and filed this election petition in the Registry of the Supreme Court. On grounds which are set out in the petition, she prays "that it might be determined that the said Rohan Kamis was not duly elected or returned and that the election was void".

Though in the petition no one is named as a respondent, Ong Kok Min filed a notice of appointment on February 2 appointing the Attorney-General or State Counsel to act for him in the proceedings. A similar notice was filed by Rohan Kamis on February 4 appointing Messrs. Rodyk & Davidson to act on his behalf. Following the filing of the notices, applications were taken out on behalf of the respondents which are the subject-matter of today's proceedings.

The submissions for the respondents are that the petitioner had not served on Ong Kok Min and Rohan Kamis a notice of the presentation of the petition and a copy of the petition in accordance with the rules relating to the service of election petitions. If the respondents succeed on this ground then in my judgment I am firmly bound by the decision of the Privy Council in *Devan Nair* v. *Yong Kuan Teik*[1] and I must not only set aside the service of the documents on the respondents but also dismiss the petition.

Election petitions are governed by Part IV of the Parliamentary Elections Act (see: Reprint of the Parliamentary Elections Act (Cap. 50 of the Revised Edition)) and by the Rules contained in the Third Schedule to the Act. The two rules that relate to the giving of notices and the service of documents are rules 10 and 15. They provide as follows:

"10. Any person returned as a member may, at any time, after he is returned, send to or leave at the office of the Registrar a writing, signed by him on his behalf, appointing an advocate and solicitor of the Supreme Court to act as his solicitor in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within Singapore at which notices addressed to him may be left, and if no such writing be left or address given, all notices and proceedings may be given or served by leaving the same at the office of the Registrar. Every such writing shall be stamped with the duty payable thereon under the law for the time being in force.

15. Notice of the presentation of a petition, accompanied by a copy thereof, shall, within ten days of the presentation of the petition be served by the petitioner on the respondent. Such service may be effected either by delivering the notice and copy aforesaid to the solicitor appointed by the respondent under rule 10 or by posting the same in a registered letter to the address given under rule 10 at such time that, in the ordinary course of post, the letter would be delivered within the time abovementioned, or if no solicitor has been appointed, nor such address given, by a notice published in the Gazette stating that such petition has been presented, and that a copy of the same may be obtained by the respondent on application at the office of the Registrar."

First, as regards the respondent, Ong Kok Min, I accept the submission of the learned Attorney-General that rule 10 has no application to him. Rule 15 however does apply. It requires that notice of the presentation of a petition accompanied by a copy thereof shall within 10 days of the presentation of the petition be served by the petitioner on the respondent. Such service it has been held by the Privy Council in *Devan Nair's* case means personal service. And personal service means serving the respondent with a copy of the election petition and showing him a sealed copy if he desires it. The question I ask myself is can it be said that that has been done in this case. On the affidavits it is clear that no such service was effected on Ong Kok Min. Even the affidavit filed on behalf of the petitioner by her solicitor, Mr. Murugason, cannot affirm that service was effected on Ong Kok Min in the manner I have described. I therefore reject the submission of Mr. Jeyaretnam for the petitioner that by leaving a copy of the petition with a subordinate officer of Ong Kok Min is personal service on him. It is a submission against the accepted meaning of personal service as understood by lawyers; it is contrary to the procedure and practice of the service of court documents. In this connection, I observe that an election petition is a court document, and, having regard to the decision of the Privy Council in *Devan Nair's* case, I hold that an election petition must be personally served. In this context, personal service of an election petition is the same as personal service of other court documents in this country.

Next, as regards Rohan Kamis, he did not avail himself of rule 10 by appointing an advocate and solicitor to act for him, nor did he inform the Registrar that he was acting in person and give an address for service. Therefore the proper method of service of an election petition on him is either by way of personal service or to leave a copy of the petition at the office of the Registrar of the Supreme Court under rule 10, and under rule 15, to publish a notice in the *Gazette* stating that a petition has been presented, and that a copy of the same may be obtained by Rohan Kamis on application at the office of the Registrar. Here again, on the affidavit of Rohan Kamis it is clear that the petitioner has not complied with rules 10 and 15 in effecting service of a copy of the petition on him.

Finally, as regards both the respondents, the petitioner has not complied with rule 15 in that in purporting to effect service on the respondents she had not served a notice of the presentation of the petition on them. This too is fatal to the election petition.

For these reasons, I set aside the service of the documents on Ong Kok Min and Rohan Kamis and dismiss the election petition.

Petition dismissed.

Solicitors: *Murugason & Co.; Rodyk & Davidson.*